

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the Senate Committee on Judiciary**

February 3, 2023

S.B. No. 992: PROPOSING AN AMENDMENT TO ARTICLE VI, SECTION 3, OF THE HAWAI‘I STATE CONSTITUTION TO INCREASE THE MANDATORY RETIREMENT AGE FOR STATE JUSTICES AND JUDGES

Chair Rhoads, Vice Chair Gabbard, and Members of the Committee:

The Office of the Public Defender supports S.B. No. 992, which would submit a ballot question to voters on a proposed amendment to article VI, section 3 of the Hawai‘i Constitution which would raise the mandatory retirement age for state judges and justices to seventy-five years.

Currently, Article VI, Section 3 sets the mandatory retirement age for judges at seventy years, yet officials in the executive and legislative branches of Hawai‘i government are not similarly subject to mandatory retirement. Indeed, federal court judges are appointed for life. The mandatory retirement age of seventy years ignores the fact that many people work well beyond the age of seventy as productive, contributing members of society. Forcing qualified, competent judges to retire simply based on an arbitrarily imposed age can adversely affect the quality of the judiciary by removing from office, competent judges who possess years of knowledge and experience.

However, to the extent that the retirement age of seventy years is designed to be a de facto “term limit” on judicial positions, this measure raises a wider debate. There are some who believe that periodic replacement of judges benefits the legal system by bringing those with fresh, innovative ideas into the judiciary. While a bench dominated by septuagenarians and octogenarians might affect public confidence in the judicial system to some degree, a mix of judges of various ages, gender, ethnicity, sexual orientation, and background provides for a strong judiciary.

If the legislature proposes this constitutional amendment regarding the raising of the age, we recommend that it be accompanied by provisions for removing a judge who is experiencing difficulty efficiently administering his/her cases due to age or health related infirmities.

Thank for the opportunity to comment on this measure.

COMMUNITY ALLIANCE ON PRISONS

P.O. Box 37158, Honolulu, HI 96837-0158

Phone/E-Mail: (808) 927-1214 / kat.caphi@gmail.com



COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Mike Gabbard, Vice Chair

Friday, February 3, 2023

Room 016

9:30 AM

SUPPORT FOR SB 992 - CON AM INCREASING MANDATORY RETIREMENT AGE

Aloha Chair Rhoads, Vice Chair Gabbard and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai'i for more than two decades. This testimony is respectfully offered on behalf of the 4,058 Hawai'i individuals living behind bars and under the "care and custody" of the Department of Public Safety/Corrections and Rehabilitation on any given day. We are always mindful that 965 of Hawai'i's imprisoned people are serving their sentences abroad -- thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

Community Alliance on Prisons appreciates this opportunity to testify in support of increasing the mandatory retirement age of justices and judges. As life expectancy increases, we must be mindful of the institutional knowledge that judges and justices have acquired through their experiences on the bench and the loss that forced retirement would have on that knowledge base of the Judiciary.

A short article by Malia Reddick, Former Manager, Quality Judges Initiative entitled, from 2015 presents a good overview of this issues that jurisdictions are wrestling with:

Mandatory Retirement Ages for Judges: How Old Is Too Old to Judge?

<https://iaals.du.edu/blog/mandatory-retirement-ages-judges-how-old-too-old-judge>

States across the country are wrestling with the question of whether a mandatory retirement age should be imposed upon judges, and if so, what that age should be. According to the National Center for State Courts, 32 states require at least some judges to retire at a certain age—usually between 70 and 75. A number of states are considering raising or eliminating their age limits, while in at least one state, lowering the maximum age has been proposed by legislators to try and keep the courts in line.

Earlier this month, the Virginia legislature raised the age limit for appellate judges from 70 to 73. The recent legislative sessions in several other states—Indiana, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, Utah, and Wyoming—also saw efforts to increase the maximum age for judges. In 2014, voters in Hawaii and Louisiana rejected ballot measures that would raise to 80 or eliminate entirely the mandatory judicial retirement age. Voters in Oregon will weigh in on the question in 2016. Legislators in Kansas, on the other hand, proposed earlier this year to lower the age limit for appellate judges from 75 to 65, as part of a package of court-curbing measures that also included changes to the way supreme court justices are selected.

Closer to IAALS' home, the mayor of Colorado Springs, Colorado has called for [raising the mandatory retirement age](#) for municipal judges from 72 to 75. IAALS Executive Director Rebecca Love Kourlis, who served on the Colorado Supreme Court from 1995 to 2006, weighed in on the issue: "A few of my former colleagues were required to retire before their time, and at my current age of 62, 72 seems pretty young. But some mandatory retirement age is not unreasonable and does assure that the bench continues to be revitalized."

One rationale for raising the mandatory retirement age for judges is that life expectancy has increased to 75 for men and 80 for women since the 1960s, so people are staying healthy and active longer than they were at the time many mandatory retirement laws were adopted. In addition, an effective judicial discipline system will remove judges from the bench who are too old to be effective. Another rationale for higher, or no, age limits is more practical: why pay retirement costs for judges with extensive experience who can still do the job? In fact, in New Jersey, where the mandatory retirement age is 70 but judicial vacancies are at an all-time high, retired judges are carrying much of the caseload.

Community Alliance on Prisons urges the committee to pass this measure so that we continue to have a strong and experienced Judiciary.

SB-992

Submitted on: 1/31/2023 6:20:56 PM

Testimony for JDC on 2/3/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Lynn Murakami Akatsuka	Individual	Support	Written Testimony Only

Comments:

I support SB 992 fo increase the mandatory retirement age from 70 years old to 75 years old for state justices and judges. This will enable our Judiciary to have the continued expertise and experienced state justices and judges available to current and future caseloads for Hawaii.

Thank you for the opportunity to submit testimony in support of SB 992.

SB-992

Submitted on: 1/30/2023 4:26:19 PM

Testimony for JDC on 2/3/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Gerard Silva	Individual	Oppose	Written Testimony Only

Comments:

We need to get ride of these Old Crooks alot sooner it should be Age 60!!!!

SB-992

Submitted on: 1/30/2023 7:37:08 PM

Testimony for JDC on 2/3/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Kenneth R. Conklin, Ph.D.	Individual	Oppose	Written Testimony Only

Comments:

Oppose. As an elder I want younger judges who will bring more energy and fresh thinking to their decision-making; who are open to new ways of solving old problems. I want to get rid of judges who have established chummy friendships with attorneys who may be appearing before them.

SB-992

Submitted on: 2/2/2023 2:45:28 AM

Testimony for JDC on 2/3/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Susan Jaworowski	Individual	Oppose	Written Testimony Only

Comments:

A similar proposed amendment was rejected by the voters in 2014, almost 73% in opposition. Why is this being brought up again? There is no purpose section to this bill so it is entirely unclear why we should revisit this less than 10 years after raising the age to 80 was soundly rejected. What has changed to make raising the age at all acceptable? There are many competent, qualified younger judges who are willing and able to move up in seniority, but we cannot do that if we raise the age. Baby boomers have to let go and retire to let younger judges rise up.

**Testimony to the Thirty-Second Legislature
2023 Regular Session**

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

Friday, February 3, 2023, 9:30 a.m.
State Capitol
Conference Room 016 & Videoconference

WRITTEN TESTIMONY ONLY

by:

Robert D.S. Kim

Bill No. and Title: Senate Bill No. 992, Relating to an Amendment to Article VI, Section 3, of the Hawaii State Constitution to Increase the Mandatory Retirement Age for State Justices and Judges.

Purpose: The purpose of this Bill is to propose a constitutional amendment to increase the mandatory retirement age for justices and judges from seventy to seventy-five years of age.

Personal Testimony in Support:

Thank you for the opportunity to comment on this important measure. The current retirement age for all judges is seventy (70) years of age. This mandatory retirement provision in the constitution is preventing seasoned and experienced judges from serving the people of Hawai'i, at the peak of their career. The maturation of jurists takes years to attain. With each case, and each year of service, judges attain a depth of knowledge that promotes justice.

Typically, mandatory retirement is justified by the argument that certain occupations are either too dangerous (military personnel) or require high levels of physical and mental skill (air traffic controllers, airline pilots). Is 70 too old? I don't believe so.

Most important, is that this mandatory retirement provision adversely affects women

Senate Committee on Judiciary
Senate Bill No. 992, Relating to an Amendment to Article VI, Section 3, of the Hawaii State
Constitution to Increase the Mandatory Retirement Age for State Justices and Judges
February 3, 2023

judges, who have longer life spans, generally than men. Currently, the number of women judges is Hawai'i State Judiciary is equal to the number of male judges. There are many states that have a mandatory retirement age for judges set at seventy-five (75). These states include Florida, Indiana, Kansas, Missouri, Oregon, Pennsylvania, Texas, Utah and Washington.

In writing this testimony as an individual, I am also a sitting Chief Judge in the Third Circuit. I entered service in 2017, and have a term ending in 2027. My seventieth birthday is in 2024, and I will not be able to finish my term due to the mandatory retirement provision. The passage of this bill will not benefit me, as the process for placing this issue on the ballot for a constitutional amendment would exceed my seventieth birthday.

However, I submit this testimony for the many judges who can benefit from this legislation. I respectfully urge passage of this bill so we can retain our most experienced judges on the bench, for the benefit of the people of Hawai'i. I will not be able to attend this hearing. Thank you.